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EXAMINER

GELLNER, JEFFREY L

ART UNIT PAPER NUMBER

3643

DATE MAILED: 07/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/634,702

Applicant(s)

CAMPANA, KIMBERLY A.

Examiner

Jeffrey L. Gellner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) 10-29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

Applicant's election of Invention I (claims 1-9) in the reply filed on 7 July 2004 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Claims 10-29 are withdrawn from examination.

### *Claim Objections*

Claim 9 is objected to because of the following informality:

The last clause in claim 9, "the front and . . . tapered lower edge" appears redundant to the last clause in claim 1, "each lower portion being tapered."

Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and <sup>9</sup>~~5~~ are rejected under 35 U.S.C. §102(b) as being anticipated by Abel (FR 2656495).

As to Claim 1, Abel discloses a lawn edging (Figs. 1-4b) comprising a plurality of middle blocks (two middle blocks shown in Fig. 4a) and two end blocks (two blocks on ends shown in Fig. 4a); each middle block being connected to a middle block and a end block by a living hinge

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(shown as narrow portions in Fig. 4b); each middle block and end block including an upper portion (wide portion of Fig. 4a, "striped" portion of Fig. 1) and lower portion (tapered portion of Figs. 1 and 4a), each upper portion including a front face (shown in Figs. 1 and 4a) comprising a three-dimensional texture (shown in Fig. 3), the lower portion tapered (Figs. 1 and 4a).

As to Claim 5, Abel further discloses the living hinge permitting two adjacent blocks to be positioned at an angle ranging from about 180° to 90° (Fig. 3f).

As to Claim 9, Abel further discloses the lower portions of each block including two side edges that extend inwardly towards each other as they extend downwardly to form a point (Figs. 1 and 4a), the lower portion further including front and rear faces (Figs. 1 and 4a), the lower portion tapered (Figs. 1 and 4a).

### ***Claim Rejections - 35 USC §103***

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. §103(a) as being unpatentable over Abel (FR 2656495 A3) in view of Kownacki et al. (US 5,956,892).

As to Claim 2, the limitations of Claim 1 are disclosed as described above. Abel further discloses lower portions of each block including two side edges that extend inwardly towards each other as they extend downward from the upper portions (see Figs. 1 and 4a) and the lower

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portion having front and rear faces (Figs. 1, 4a, and 4b). Not disclosed is the lower portion having a barbed rib. Kownacki et al., however, discloses a lawn edging with a barbed rib (26 and 34 of Fig. 2) in the lower portion (24 of Fig. 2). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the edging of Abel by adding barbs as disclosed by Kownacki et al. so as to inhibit undesired removal of the edging (Kownacki et al. at col. 3 lines 13-15).

Claim 4 is rejected under 35 U.S.C. §103(a) as being unpatentable over Abel (FR 2656495 A3).

As to Claim 4, the limitations of Claim 1 are disclosed as described above. Not disclosed is the lawn edging fabricated by a continuous forming process. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the edging of Abel by making with a continuous vacuum forming process as a known method of shaping plastic objects. MPEP 2113 (Product-by-Process Claims) states that "if the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior art product was made by a different process." Here, the Applicant's edging is anticipated by Abel. The process by which the edging is made is not patentably distinct.

Claims 7 and 8 are rejected under 35 U.S.C. §103(a) as being unpatentable over Abel (FR 2656495 A3) in view of Rosenbaum (US 4,509,911).

As to Claim 7, the limitations of Claim 1 are disclosed as described above. Not disclosed are the blocks and living hinges formed from two or more plastic materials. Rosenbaum,

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however, discloses an object with hinges made from a plurality of plastic materials (Fig. 1; col. 4 lines 43-47). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the edging of Abel by making from a plurality of plastic materials as disclosed by Rosenbaum so as to take advantage of the different physical properties of the combined plastics (see Rosenbaum at col. 4 lines 43-47).

As to Claim 8, the limitations of Claim 1 are disclosed as described above. Not disclosed are the blocks and living hinges formed from polyvinylchloride. Rosenbaum, however, discloses an object with hinges made from polyvinyl chloride (Fig. 1; col. 1 lines 23-25). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the edging of Abel by making from polyvinyl chloride as disclosed by Rosenbaum so as to take advantage of the different physical properties of the combined plastics (see Rosenbaum at col. 4 lines 43-47).

Claims 1, 3-6, and 9 are rejected under 35 U.S.C. §103(a) as being unpatentable over Kono (JP2000-300071) in view of Oungst (US 352,146).

As to Claim 1, Kono discloses a lawn edging (Figs. 1-14) comprising a plurality of middle blocks (middle blocks shown in Figs. 1-3, 7, 11) and two end blocks (two blocks on ends shown in Figs. 1-3, 7, 11); each middle block being connected to a middle block and a end block by a living hinge (shown as narrow portions in Figs. 1-3, 7, 11); each middle block and end block including an upper portion (region of block around top of block in Figs. 1-3, 7, 11) and lower tapered portion (region of block around top of block in Figs. 1-3, 7, 11) each upper portion

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including a front face (shown in Figs. 1-3, 7, and 11) comprising a three-dimensional texture (shown in Fig. 3). Not disclosed is the upper portion having a front face that has three-dimensional texture. Oungst, however, discloses an edging with a front face having a three-dimensional texture (either top with scalloping as shown in Fig. 1 or the upper portion with design shown in Fig. 1; see col. 1 lines 33-37). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the edging of Kono by adding the three-dimensional texture as disclosed by Oungst so as to meet consumer demand and tastes.

As to Claim 3, Kono as modified by Oungst further disclose the bocks as hollow (Kono at Fig. 11).

As to Claim 4, the limitations of Claim 1 are disclosed as described above. Not disclosed is the lawn edging fabricated by a continuous forming process. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the edging of Kono as modified by Oungst by making with a continuous vacuum forming process as a known method of shaping plastic objects. MPEP 2113 (Product-by-Process Claims) states that "if the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpantentable even though the prior art product was made by a different process." Here, the Applicant's edging is anticipated by Kono as modified by Oungst. The process by which the edging is made is not patentably distinct.

As to Claim 5, Kono as modified by Oungst further disclose the living hinge permitting two adjacent blocks to be positioned at an angle ranging from about 180° to 90° (Kono at Figs. 3 and 11).

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As to Claim 6, Kono as modified by Oungst further disclose pressure equalization holes (in Fig. 11 region in edging around lead line of 23).

As to Claim 9, Kono as modified by Oungst further disclose the lower portions of each block including two side edges that extend inwardly towards each other as they extend downwardly to form a point (Fig. 1 of Oungst), the lower portion further including front and rear faces (Fig. 1 of Oungst), the lower portion tapered (Fig. 1 of Oungst).

Claims 2 is rejected under 35 U.S.C. §103(a) as being unpatentable over Kono (JP2000-300071) in view of Oungst (US 352,146) in further view of Kownacki et al. (US 5,956,892).

As to Claim 2, the limitations of Claim 1 are disclosed as described above. Oungst further discloses lower portions of each block including two side edges that extend inwardly towards each other as they extend downward from the upper portions (see Fig. 1) and the lower portion having front and rear faces (Fig.1). Not disclosed is the lower portion having a barbed rib. Kownacki et al., however, discloses a lawn edging with a barbed rib (26 and 34 of Fig. 2) in the lower portion (24 of Fig. 2). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the edging of Kono as modified by Oungst by adding barbs as disclosed by Kownacki et al. so as to inhibit undesired removal of the edging (Kownacki et al. at col. 3 lines 13-15).

Claims 7 and 8 are rejected under 35 U.S.C. §103(a) as being unpatentable over Kono (JP2000-300071) in view of Oungst (US 352,146) in further view of Rosenbaum (US 4,509,911).



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As to Claim 7, the limitations of Claim 1 are disclosed as described above. Not disclosed are the blocks and living hinges formed from two or more plastic materials. Rosenbaum, however, discloses an object with hinges made from a plurality of plastic materials (Fig. 1; col. 4 lines 43-47). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the edging of Kono as modified by Oungst by making from a plurality of plastic materials as disclosed by Rosenbaum so as to take advantage of the different physical properties of the combined plastics (see Rosenbaum at col. 4 lines 43-47).

As to Claim 8, the limitations of Claim 1 are disclosed as described above. Not disclosed are the blocks and living hinges formed from polyvinylchloride. Rosenbaum, however, discloses an object with hinges made from polyvinyl chloride (Fig. 1; col. 1 lines 23-25). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the edging of Kono as modified by Oungst by making from polyvinyl chloride as disclosed by Rosenbaum so as to take advantage of the different physical properties of the combined plastics (see Rosenbaum at col. 4 lines 43-47).

### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Reiter discloses in the prior art an edging with an upper portion and a lower, tapered portion.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 703.305.0053. The

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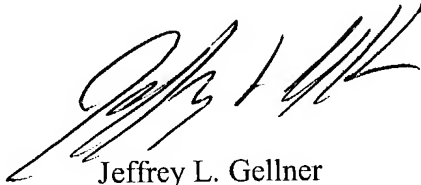
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Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The

Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The official fax telephone number for the Technology Center where this application or proceeding is assigned is 703.872.9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.

A handwritten signature in black ink, appearing to read 'Jeffrey L. Gellner', is positioned above the printed name.

Jeffrey L. Gellner